

STATE OF MINNESOTA
IN COURT OF APPEALS

A22-1301



In re the Marriage of:

Lisa Smittkamp, n/k/a Lisa Ann Brady,
petitioner,

Respondent,

vs.

David Jules Smittkamp,

Appellant.

ORDER OPINION

Dakota County District Court
File No. 19AV-FA-21-831

Considered and decided by Cochran, Presiding Judge; Segal, Chief Judge; and Wheelock, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. In this appeal from a judgment and decree dividing the marital estate of appellant David Jules Smittkamp (husband) and respondent Lisa Ann Brady (wife) following their divorce, husband raises several issues. Husband challenges the district court's determination that he dissipated marital assets, the district court's division of the parties' marital property, and the district court's decision to award an unspecified amount of conduct-based attorney fees to wife. Because the district court's judgment and decree did not fully adjudicate wife's request for conduct-based attorney fees, we conclude that the appeal is premature and must be dismissed.

2. On May 17, 2021, wife filed a petition to dissolve the parties' marriage. On September 21, 2021, wife filed a motion seeking to bifurcate the dissolution proceedings. In the same filing, wife also requested conduct-based attorney fees pursuant to Minn. Stat. § 518.14, subd. 1 (2022). The parties thereafter agreed to bifurcate the proceedings. On October 6, 2021, the district court entered a partial judgment and decree that dissolved the parties' marriage immediately. All other issues in dispute were reserved.

3. On March 15, 2022, the matter proceeded to a three-day court trial on the remaining disputed issues. Those issues included husband's request for temporary spousal maintenance, the division of the parties' marital assets, and wife's request for conduct-based attorney fees.

4. On July 20, 2022, the district court issued an order titled "Findings of Fact, Conclusions of Law, Order for Final Judgment, and Final Judgment and Decree." Judgment was entered on that order on July 21, 2022.¹ The district court denied husband's request for temporary spousal maintenance, determined that husband had dissipated certain marital assets, and divided the parties' marital assets accordingly. The district court also determined that wife was entitled to conduct-based attorney fees pursuant to Minn. Stat. § 518.14, subd. 1, but the district court did not determine the amount of the attorney-fee award. Instead, the district court ordered wife's counsel to file an affidavit setting forth the conduct-based attorney fees that she was seeking.

¹ The district court did not enter a partial judgment under Minn. R. Civ. P. 54.02.

5. On August 12, 2022, counsel for wife filed an affidavit in support of wife's request for conduct-based attorney fees. The affidavit sought an award of \$20,000 in attorney fees.

6. On September 19, 2022, husband filed this appeal. At the time the appeal was filed, the district court had not issued a separate order and judgment adjudicating the amount of conduct-based attorney fees to be awarded. Nor does the record before us include any further order and judgment regarding attorney fees.

7. Under Minn. R. Civ. App. P. 103.03(a), an appeal may be taken "from a final judgment, or from a partial judgment entered pursuant to Minn. R. Civ. P. 54.02." If the district court has not entered a partial judgment under Minn. R. Civ. P. 54.02, a partial judgment is not appealable until entry of a final judgment adjudicating all remaining claims. *First Nat'l Bank of Windom v. Rosenkranz*, 430 N.W.2d 267, 268 (Minn. App. 1988).

8. Here, the district court entered judgment on July 21, 2022. But there remains a pending request for conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1, that the district court has not finally adjudicated.

9. A pending request for attorney fees generally does not affect the finality of a judgment unless (1) "the request for attorney fees is a separate claim, independent of the underlying claim or claims that comprise the merits of the action," or (2) "an award of attorney fees is part of the damages that may be awarded on a claim." *Weiss v. Priv. Cap., LLC*, 839 N.W.2d 106, 108 (Minn. App. 2013) (quotations omitted).

10. In *Baertsch v. Baertsch*, this court held that a motion for conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1, was a separate claim and that the postdecree order appealed in *Baertsch* was not a final order because it did not fully determine a motion for conduct-based attorney fees. 886 N.W.2d 235, 237-39 (Minn. App. 2016). This court explained that “because a motion for conduct-based attorney fees focuses on a party’s behavior and is not necessarily tied to the merits of the claims . . . conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1, are separate claims.” *Id.* at 239. Therefore, a postdecree order that does not fully determine a motion for conduct-based attorney fees is not final and immediately appealable. *See id.*

11. Here, because wife requested conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1, wife’s fee request is a separate claim under *Baertsch*. And because the district court’s July 21, 2022 judgment did not determine the amount of the conduct-based attorney fees, the district court did not fully adjudicate wife’s request for conduct-based attorney fees. The July 21, 2022 judgment is not a final judgment. And the district court did not certify entry of a final partial judgment under Minn. R. Civ. P. 54.02. We therefore must dismiss this appeal as premature.


IT IS HEREBY ORDERED:

1. This appeal is dismissed as premature.
2. Husband may seek review of the district court’s July 21, 2022 judgment in a timely appeal from a final judgment adjudicating wife’s request for conduct-based attorney fees. Husband’s filing fee for that appeal shall be waived. Husband shall file a copy of this order with the appeal documents for the future appeal, if filed.

3. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: July 28, 2023

BY THE COURT



Judge Jeanne M. Cochran